

# LIBERTY ADVOCATE.

WHEN POWERS ARE ASSUMED WHICH HAVE NOT BEEN DELEGATED, A NULLIFICATION OF THE ACT IS THE RIGHTFUL REMEDY.—Jefferson.

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JAMES M. SMILEY, EDITOR.

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## MISCELLANEOUS.

From the New Orleans Bulletin.

### INTERESTING TO THE PUBLIC.

The following opinion of the Supreme Court of this State, lately declared by Judge Eustis, is deemed of much interest to the public, and we hasten to lay it before our readers.

The Counsel were Mr. L. C. Duncan for the plaintiff, and Mr. I. T. Preston, for defendant.

CARMELITE BAHAM, wife of LOUIS LE SASSIER, appl't., versus JOHN M. BACH, appellee.

[Appeal from 1st Judicial Dis. Court.]

The petitioner alleges that, with the authority of her husband, she sold certain lots of ground to the defendant at public auction; that she has signed and tendered to him an authentic act of sale of the property, which he refuses to execute. She prays that the sale at auction be decreed good and valid; that the defendant be ordered to accept and execute the act, and to pay the price and comply with the conditions of the sale.

The defendant, among other matters of defence, charges that the plaintiff by her agents bid against him at the sale at auction, and run up the property beyond the bids of the real bidders; he prays for judgment and for general relief against the doings of the plaintiff.

The auctioneer stated in his examination, that the lots were limited to the sum of \$2000 each; that this was not communicated to the bidders; and that he advanced on the bids made by others, as we understand him, up to that sum; that it is customary for auctioneers, when they put up property which is limited, to start the sales and rise on their own bids till they reach the limits prescribed by the owner.

There were many real bids besides that of the defendant; and in relation to the bidding off the property, there is nothing which affects the validity of the sale, except the fact of his bidding for the owner as deduced by him.

There was judgement for the defendant, and the plaintiff has appealed.

Our own code has provided in express terms, for the manner in which sales at auction are to be conducted.

The auctioneer is a public officer—he is bound to have from the seller the terms and conditions of the sale in writing; to proclaim them at the sale in a loud and audible voice, and to offer the property publicly for sale.—He is bound to receive the bids, and after waiting a reasonable time to ascertain the highest bid, he is bound to declare the person making it to be the purchaser, and the thing sold is adjudicated to him. From that time the contract is subjected to the same rules which govern the ordinary contract of sale. L. C. art. 2584, 2585, 2586.

In § 12, art. 1841, it is provided that combinations with respect to "sales, to enhance the price by false bids or offers, or to depress it by false assertions, or artifices which invalidate the contract when practised by those who are parties to it, or give rise to an action of damages when they are not."

This provision of our laws is in harmony with the principles first established on this subject in England, by Lord Mansfield, in the case of *Roxwell vs. Christie*, (Cowp. 395.) as was observed subsequently by Lord Kenyon, "the whole of the reasoning in that case is founded on the noble principles of morality and justice, principles that are calculated to preserve honesty between man and man."

The decision in that case has not been followed in all cases, either in the jurisprudence of England or of the United States, but we apprehend that time and scrutiny will re-establish its force wherever the principles of law and public morals are coincident.

As late as 1827, Lord Tenterden, in a case where the owner employed one person to bid for him, and he was only ordered to bid up to a certain sum, said, "it will add, that the strong inclination of my opinion is, that if only one person be employed to bid, with a view to save the auction duty, the sale is void, unless it be announced that there is a person bidding for the owner, the act itself is fraudulent."—*Moodie & Malkin* 128; 22 Eng. Com. Law Rep. 268; 1st Story's Equity Jurisprudence § 298, and cases there cited.

In the case of *Corrijoles vs. Mossy*, (2 L. R. 507,) the Supreme Court of this State held, that an owner might withdraw his property before the highest bid was accepted by the auctioneer. But this gives the owner no right to bid, unless he publicly reserves to himself that right; still less can he bid through the auctioneer. The duty of the auctioneer is to sell the property—to receive the bids offered, not to make them.

We do not censure the conduct of the auctioneer, in this instance, because we are aware this is the general usage, to conduct sales at auction in this manner; but it is an usage which we can neither justify nor recognize, in the administration of justice; it is equally opposed to public policy, and to that fairness which ought to exist, and which people have a right to expect, in a sale of property avowedly offered to the highest bidder.

Our opinion on this subject renders it unnecessary to examine the other question raised by the defendant.

It is, the referee, ordered, adjudged and decreed, that the judgment of the District Court be affirmed, with costs in both courts.

## GENERAL MEXIA.

A letter from this distinguished leader of the Patriots in Mexico appears in our columns to-day. Its contents reveal, without disguise, the real motives and plans of the party of which Gen. Mexia is the efficient organ and head.—Fortunate is it for Mexican freedom and for the Federalists, that an officer of such rare qualifications and endowments has been appointed to lead and to control the march of the revolution. His military accomplishments, rare sagacity, and ceaseless, untiring activity, raised him to a high rank in the army of Mexico.—To merit alone was he indebted for his elevation. Santa Anna regarded him as the best of his generals, and indeed it is intimated that to him is the ex-president indebted for much of the military fame he enjoyed, until the defeat at San Jacinto cropped his laurels. We have heard it remarked of Mexia that while other Mexican generals would be lying by to take refreshments, or to enjoy the luxury of *siesta*, he would be pushing ahead, improving every moment, and seizing upon every advantage that would tell upon the fortunes of a campaign.—Habits of indefatigable industry and perseverance have characterized his life, and contributed not a little to that superiority over his rivals, and high reputation which he has enjoyed.—To all the shining qualities of the soldier, he adds also the endowments of the enlightened statesman and the virtues of a pure patriot.

The liberation of Mexico—the emancipation of his countrymen from the yoke of tyrannical masters—are the single and lofty motives that impel him to action. The ball of revolution has not been set in motion by him for the selfish purposes of personal aggrandizement, but with the holy and sublime ambition of bursting the fetters of a whole nation, and securing the establishment of civilization and liberal institutions. For the achievement of this great end, Providence has endowed him with rare and admirable abilities. A fitness like that of Washington, seems to point him out as the gallant chieftain who is to lead his oppressed country to victory and to freedom. Under his auspices, backed by the valor and counsels of General Urrea, Federalism may yet prove triumphant. The little army of patriots have now boldly resolved to penetrate the interior. In the populous city of Puebla, and the adjacent provinces, they have many staunch and powerful friends. These will join the standard of revolt, and every day's march will add to their strength till the forces of the Federalists will be a match in the field for all the troops of the Government. In view of these facts, the friends of Mexican freedom have much to encourage their drooping hopes. The cause is in good hands, and is destined we trust ere long to be crowned with signal and entire success.—N. O. Bulletin.

CUARTEL DE TUSPAN, Abril 10, 1839.

Querido Sor—

Con algun retardo he recibido la estimada carta de V. del dia 10. del mes pasado que tengo ahora el honor de contestar. Con ella tuve tambien el gusto de recibir la coleccion de su estimado periodico, y me he congratulado mucho al ver que los hombres sensatos de Nueva Orleans simpatizan con la causa federal de mi patria.

V. no se equivocaba en la idea q. se ha formado; la causa federal en Mejico es la causa del pueblo contra sus opresores. y sin la complicacion de la cuestion francesa, mucho tiempo ha que este habria triunfado de un partido oligarcal que ha usurpado el poder, por circunstancias peculiares. Los generales Urrea, Lemmus y yo trabajamos con el pueblo y por el pueblo: nos oponen a veteranos mercenarios que pagados y dirigidos por los enemigos del progreso de las luces, nos hacen una guerra tenaz mucho mas desde que el inmorral gal. Santa Anna ha vuelto a tomar, desgraciadamente, para nuestros negocios.

Como la guerra tiene sus alternativas, nuestras armas han experimentado, algunos reversos asi como algunos triunfos. Yo tube la suerte de ganar una batalla el 15 del pasado y este ha sido un golpe mortal pa. el gobierno intruso. Despues de esta suceso hemos comenzado a marchar pa. el interior y dentro de algunos dias contamos estar en las tierras altas, amenazar la capital y apoyar los movimientos populares de Puebla y Mejico. La opinion de los Pueblos lo repito, esta, por el restablecimiento del sistema federal: de ese sistema de gobierno es el unico que conviene a un pueblo que quiere ser libre. En esto confiamos mas que en nuestras bayonetas y en que el autor de todo lo creado nos ayudara y protegiera en nuestra desinteresada empresa.

Al fin a fuerza del influjo del ministro ingles parece que se ha terminado la cuestion francesa. El ministro Packenham, aristocrata por principios y ligado en Mejico con todo el partido monacal como empeño en eso negocio, por servir a sus amigos y no por un motivo filantropico. Yo no puedo menos que alegrarme de esa resultado, porq. al fin esa es un beneficio pa. toda la Nacion.

No dege V. de enviarme a Tampico sus apreciaciones papeles, y aceptar las protestas que ha hago de mi amistad y aprecio, con lo que tengo el honor de ser de V. afectisimo.

S. S. Q. S. M. B.

JOSE ANTONIO MEXIA.

[Translation.]

GARRISON AT TUSPAN, April 1, 1839.

Dear Sir—

After some delay, I am in receipt of your esteemed letter of the 1st ultimo, which I have the honor now to answer. With it also I had the honor to receive a file of your valuable paper; and rejoice much to see that the sensible men of New Orleans sympathize with the Federal cause of my country.

You are correct in the opinion you have formed. The Federal cause in Mexico is the cause of civilization and liberty; it is the cause of the people; against their oppressors: and, were it not for the French question, would have long

ere this triumphed over the oligarchy that has, owing to peculiar circumstances, usurped the power. Generals Urrea, Lemmus, and myself, labor with the people, and for the people. We oppose the mercenary veterans, paid and directed by the enemies of civilization; and now that General Santa Anna has returned to the head of our affairs, we have to wage a severe war.

As war has its fortune, our arms have experienced some triumphs. It was my lot to gain a battle on the 10th ultimo, which is a mortal blow to the Government. After this success, we have given orders to march to the interior, and in the course of a few days expect to reach the high lands; menace the capital, and assist the popular movements in Puebla and Mexico. I respect the opinion of these people; it is for the re-establishment of the Federal system—of that system of government which is the only one suitable for a people that desire to be free. In this we trust more than our bayonets; and that the Author of all Creation will assist and protect us in our disinterested enterprise.

In conclusion, it appears the influence of the English Minister has put a termination to the French question. Minister Packenham, an aristocrat by principle, and leagued with all the monarchical party in Mexico, took care in this affair to serve his own friends, and not for any philanthropic motives. I cannot, however, but rejoice at the result, which is a benefit to the whole nation.

Do not neglect to send me at Tampico, your valuable paper; and accept the assurance of my friendship and esteem. I have the honor to remain,

Yours, most affectionately,  
JOSE ANTONIO MEXIA.

## IMMENSITY OF CREATION.

"He who through vast immensity can pierce,  
Sees worlds on worlds compose one universe;  
Observe how system into system runs,  
What other planets circle other suns;  
What varied beings people every star,  
May tell why God has made us as we are."

Some astronomers have computed that there are no less than 75,000,000 of suns in this universe. The fixed stars are all suns, having, like our sun, numerous planets revolving round them.—The Solar System, or to that which we belong, has about 30 planets primary and secondary, belonging to it. The circular field of space which it occupies, is in diameter three thousand six hundred millions of miles, and that which controls much greater. That sun which is nearest neighbor to ours is called Sirius, distant from our sun about twenty-two millions of miles. Now if all the fixed stars are as distant from each other as Sirius is from our sun; or if our solar system be the average magnitude of all the systems of the 75 million of suns, what imagination can grasp the immensity of creation! Every sun of the 75 millions, controls a field of space about 10,000,000,000 of miles in diameter. Who can survey a plantation containing 75 millions of circular fields, each ten billions of miles in diameter! Such however, is one of the plantations of Him, "who has measured the waters in the hollow of his hand, and meted out heaven with a span, and comprehended the dust of the earth in a measure, weighed the mountains in scales, and the hills in a balance;" he who "sitting upon the orbit of the earth, stretcheth out the heavens as a curtain, and spreadeth them out as a tent to dwell in."

## A SHOCKING TRAGEDY.

An American Mother and her three daughters murdered by Pirates.

A foreign journal received by the recent arrival at New York, under date of Athens, January 7th, furnishes the details of one of the most revolting instances of piracy and murder, to be met with in the calendar of crime.

It is stated that on the 10th of November last, the Turkish schooner, Cherkaj Scherj (The Prophet's Mantle) anchored in the Bay of Patras, its crew consisted of Captain Said, Voura, and nine others. The vessel carried, besides eight passengers, a German antiquary, M. Hundschildt; Mr. and Mrs. Davidson, of Carolina, with their three daughters; and two young Turks, Abdallah and Hussien, twin sons of the Aga of Kars. The cargo consisted of Cashmere shawls, oriental trinkets, Cretan embroidery, and other valuable trinkets. On the evening of the 12th the crew and passengers returned on board, and on the 13th at dawn, the vessel was to sail. The Patras fisherman perceived by the schooner's lights that she was sailing, though they did not hear the customary signal-gun fire.

Below in one of the cabins, were extended the lifeless bodies of Mrs. Davidson and her three daughters; the state of their corpses revealed that the most infamous violence had preceded their dreadful wounds. The ship's mast and oars had been demolished with axes, and the whole cargo plundered. The occurrence was forthwith reported to the Governor of Patras, and the poor youth saved by the fishermen was carried to an hospital. Every attempt at discovering the perpetrators of this atrocious carnage was at first fruitless. All that was ascertained was, that, on the evening before the schooner was to have sailed, a brig, which appeared to be from the Island of Samos, had beat about the Bay of Patras. Two days after the dead bodies of two more of the crew were found on the shore. At length the young Abdallah whom the fishermen had saved recovered enough to declare the following:

Some hours after, when the sun was above the horizon, a few fishermen spreading their nets on the shore, descried a man struggling amidst the waves. Two of them rowed to his assistance, and arrived in time to save him.—He was a youth dressed in the Turkish costume. His condition was horrible; he was fainting, and the blood was gushing from a large recent wound in his head. He was conveyed

speechless to a cabin, where every attention was paid him. The fishermen conjecturing the other persons might have been wrecked, proceeded with their boats in various directions. They shortly espied the carcass of a vessel, which was thrown on the coast. It was the Cherkaj Scherj. The scene thus presented was horrible on the deck, which was streaming with blood, lay the atrociously mangled corpses of the captain and eleven other persons.

The schooner had scarcely left the Bay of Patras—the sea was calm, the passengers and a part of the crew had retired to the cabins—when a fearful tumult was suddenly heard.—Fifteen ruffians, armed with daggers and yataghans, had boarded the vessel, and, before any resistance could be attempted, massacred or threw overboard every soul on deck. Abdallah had beheld the death of his brother, and he was making himself a desperate defence, when the cut of a yataghan cast him into the sea.—Abdallah added that on the day he arrived at Patras he had been with the captain in a coffee-house, and that he thought he had seen there two men whom he had seen again on the awful night of Nov. 12th. The youth farther stated that the captain had long talked before the two men of the richness of his cargo, and that, next day, on the owner of the coffee-house being asked who those two strangers were, he had replied that they were old soldiers of Hydra, living quietly at their homes. The coffee-house keeper was then questioned. At first he denied all, but subsequently avowed that the two men had conversed with Abdallah and the captain, adding that he knew nothing of what they might have done.

Notwithstanding this declaration, he was imprisoned, when his wife alarmed at the consequences which her husband's concealment might entail, disclosed the fact that the two suspicious individuals were Geo. Diomada, and Alexander Gloukos, two of the most formidable pirates of Samos, and that their stronghold was near the Cavern of Philoctetes. The woman protested that her husband was guiltless, and that his only relations with them were those of a friendship formed while serving together in the Greek insurrection.

Upon these circumstances being communicated to the Governor of Samos, he hastened with 300 infantry and 60 horse to the Cavern of Philoctetes, which he caused to be surrounded. He in person, with 50 picked men, entered the den. Scarcely had he entered into its dark vaults, when he had to sustain a discharge of musketry. After a sanguinary struggle, which obscurity rendered still more horrible, the fire of the pirate band was silenced. Fifteen of them had been slain, one only captured, and the remainder had escaped by an aperture which the governor not having detected it, had not been watched and guarded. Young Abdallah, on being confronted with the prisoner, identified him as one of the two men he had met at Patras. After much hesitation, the coffee-house keeper avowed that the villain was no other than Alexander Gloukos, the lieutenant of the brig commanded by George Diomada.

## METEORIC IRON IN TEXAS.

A gentleman returned from a five years' absence in the province of Texas, during which time he had been frequently with the Comanche Indians, and a small party of them conducted him to a mass of metal lying on the bank of a creek. Its length was four feet, and it was about one foot square [at the end.] It required six of the Indians to raise it on end. A piece weighing two ounces was cut off by a tomahawk. It possessed great hardness and tenacity, and when hammered (in the cold) shewed great malleability, being easily beaten out very thin without cracking or scaling. The color was stated to be between that of gold and silver. Its lustre was remarkable, and could not be tarnished by any thing that was done to it, even by the application of heat. The large mass of metal seemed to defy every attempt to make an impression on it, except under the hammer, when it became pliable and soft.—From the acquaintance which we have with the large mass alluded to above, we cannot doubt that the piece described in Mr. Cox's letters is nickeliferous meteoric iron. Those that saw the piece were disposed to make it out to be gold, and probably saw a yellow tint quite as strongly as it existed, if indeed it existed at all, for the malleable iron which we have from the same region is like that of Siberia, of a remarkable pure grayish white, with a high degree of lustre.

We have recently seen a gentleman, who stated that he knew of several large pieces of malleable iron in Texas, and we hope to obtain some more precise information concerning them.

## METEORIC IRON IN FRANCE.

The late Col. George Gibbs brought to this country some pieces of meteoric iron which he detached from a large mass lying on the mountains of Auvergne in France, and a notice of it was published in Dr. Bruce's Journal of Mineralogy, in connexion with one of the Louisiana iron.

The following extract is taken from a letter addressed to the editor by Mr. Wm. C. Woodbridge, the well known geographer, and dated Paris, Aug. 29, 1829.

"In passing through Bonn, upon the Rhine, I visited Professor Noeggerath, a distinguished mineralogist of that university. He spoke with great interest of our efforts in reference to mineralogy, and especially of the American Journal. He observed to me that, singular as it was, he had received through that Journal the first account of an interesting fact in his own neighborhood.

"He had heard many years since of a large mass of iron lying on one of the mountains, termed 'the Seven Mountains,' in this vicinity, but which was supposed to be a remnant of an old furnace. He designed to examine it, but delayed from time to time, and at length heard that a foreign officer had been there and taken

away a large portion. He thought little more of it, until some time after, when he saw in the American Journal of Science, G. Gibbs' account of his discovery of a mass of meteoric iron on this very spot. He immediately went to examine the fact: he found that the mass had been cut up and put into the forge, but the smiths not having skill to work it, it was again thrown aside, and lay buried under a heap of scoria. Professor N., after some search, discovered a very large quantity of this iron, and verified the existence of nickel, and the truth of the account which the American Journal had been the medium of announcing to the world, of one of the largest masses of meteoric iron yet discovered."—*Silliman's Journal*.

## ON THE FASCINATION OF SNAKES.

A friend in South Carolina, to whom I was on a visit, invited me to a morning walk round his plantation, and recommended our fowling pieusas companions. The day proved very sultry; and while my friend proceeded to give directions to a gang of his negroes at a distance, he advised me to take the benefit of a shade formed by a wood adjoining the field in which we then were. I took the hint; and while leaning on the fence, (which was constructed on a bank between two dry ditches) I was alarmed by the rattle of a snake very near me. I instantly sprang on the top rail of the fence, and the next moment discovered the monster in one of the ditches within ten feet of the spot where I was seated. As I levelled my gun at his head, and was in the act of pulling the trigger, his tail ceased to vibrate.

Conscious, from his position, that I was not the object of his regard, and that I was in no danger from him, and confident that I could destroy him at any moment I pleased, I sat still to observe his further movements. As his eyes seemed to be riveted to a particular spot, I followed their direction, and discovered a wood-rat. At the moment of my first seeing this little animal, he was rising from a crouching posture, and endeavoring to retire by a retrograde movement. This attempt was immediately followed by a second tremendous exercise of the rattle, and the rat again sank to the ground. I witnessed several repetitions of this operation; and the result was, that, at length, the rat appeared perfectly exhausted; the snake advanced towards his prey, and was in the act of taking it into his mouth, when I discharged my two barrels at his head, and killed him on the spot. Whether any of my pellets struck the rat, I am unable to say; but, after the closest search, we could detect no mark of violence about his body, and he was dead when I took him up.

Some years after the foregoing circumstance had taken place, as I was accompanying a lady to church in a gig, we were alarmed by the rattle of a snake on the road side. After I had tranquillized the horse, and prevailed on the lady to hold the reins, I returned to the spot whence the noise seemed to issue, and soon discovered the subject of our alarm. The monster was lying in a coil, ready to strike, but manifested no concern at my approach. Having armed myself with a long fence rail, I was in the act of crushing his head, when I saw a rabbit in the same posture and condition which the rat had exhibited. The fall of my weapon disabled the snake, and I soon despatched him. The rabbit I took into my hands, without any effort on its part, to resist or escape, and deposited it in my companion's lap; but it died before we reached the church. I am confident that the animal had sustained no bodily injury, either from the snake or myself.

MURDERS are multiplying so thick and fast in almost every part of the State, that it is almost impossible to recount them all. To look over the deeds of blood and outrage that have been perpetrated in the South-western States, a stranger might well suppose that the inmates of Pandemonium had been let loose among us. It is time the press should sound the tocsin of alarm and call the people to the maintenance and support of the law, and not of the law alone, but of the honor and reputation of the South, which deeds of violence and blood too often unpunished, have disgraced in the eyes of the world. There will be no cessation of these outrages till public sentiment shall frown indignantly upon the man who will carry about his person weapons of death. Let the carrying of the Bowie Knife, the pistol, the dirk, the sword cane, once become an approbrium, & then may we begin to hope that the sun will no longer witness in the South-west such revolting scenes as in days that are past, have disgraced and polluted our land.

When public sentiment shall point out the man whose hands are polluted with blood, unjustly shed, as a monster odious alike in the sight of God and man, then may we begin to feel that human life is indeed a sacred thing and the shedding of blood an act over which fiends alone can exult.—*Natchez Courier*.

A Scion worthy of his Stock.—Our readers will no doubt recollect seeing, in our compendium of foreign news brought by the Great Western, an account of the murder at a school near London, of a young man named Hayes by Medhurst. The case created much excitement in the vicinity, and the more, in consequence of the fact, that the grandfather of the prisoner, a very wealthy man, had been formerly (in 1804) indicted for the murder of his wife. It appeared in evidence, that he cut off his wife's head,—placed it on the table and addressed it thus,—"there now, see if you can stop scolding at me for half an hour." The jury convicted him of murder, but he escaped hanging in consequence of insanity, and he is now at the age of nearly eighty, in the Insane Hospital at York.—*N. Y. Despatch*.

Going to the Far West.—A colony of 30 hardy young men on the eve of setting out from St. Louis, Mo. to establish themselves at Oregon on the Pacific. This must be the far west found at last.